

HONORABLE ROBERT MORRILL
Mediation

YANKEE AUCTION

A “Yankee Auction” is a method I use to settle cases that is without risk to either side. After hearing from both sides of a lawsuit and gauging the strengths and weaknesses of the lawsuit, the parties’ risk tolerance, and the cost/benefit of trial for each party, I select the “auction” number or settlement amount. The “auction” number does not represent my valuation of the case. Rather it is a settlement amount that I hope will be attractive enough to both sides that they will bid “yes.”

I announce to both sides orally or by email the “auction” amount and when the “auction” closes. Neither side may communicate with the other while the “auction” is open. Each party should discuss the “auction” number with counsel and elect before the “auction” closes whether to accept or reject the settlement amount. Each party’s decision is communicated to me confidentially, preferably by email. A party can only answer “yes” or “no.” Submission of any new conditions or a different amount will be considered a “no.”

A party’s answer is completely confidential, never disclosed by me to anyone. If both parties answer “no,” I will inform both parties the case did not settle. If one party responds “yes” and the other party “no,” I will inform both parties that the case did not settle. It is only if both parties answer “yes,” will I inform the parties that the case settled for the “auction” number. Since each party’s answer is confidential, counsel should submit it as soon as it is reached.

The advantage of a “Yankee Auction” is that each party’s bid is confidential if the case does not settle. In other words, if a party bids “yes” and the other side “no,” the party who bid “no” will never know that the other party answered “yes,” and the parties return to their pre-auction negotiating stance without loss of position. A “Yankee Auction” is no risk proposition. If the “auction” fails, the parties may continue to negotiate a settlement, but their bids remain secret unless a party wishes to reveal it.

If either side needs more time to respond to the “auction,” counsel should notify the opposing party and me and request the “auction” period be extended. If anyone has any questions about “Yankee Auctions,” they may contact me by email or telephone.